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ABSTRACT

As tribes and individuals, Indians claim dual rights in American society. Granted full citizenship in 1924, Indians are entitled to all protections and benefits enjoyed by other citizens, including free public education for their children. As the original inhabitants of the United States, Indians also claim rights accruing to no other population groups based on treaties signed between individual tribes and the Federal Government between 1778 and 1871, acts of the U.S. Congress to implement the treaties and provide for the general welfare of Indian people, and court decisions upholding the validity of treaties and special legislation to deal with Indian matters. This summary, written for the layman with special emphasis on education, reviews the treaty guarantees made by the Federal Government and the services actually provided under the guarantees. It summarizes congressional intent, from the end of the treaty period to the present, in assigning responsibilities for Indian affairs to a number of Federal agencies. Finally, it examines the consistency with which the courts have upheld the concept of dual Federal responsibility to Indian citizens, as expressed in treaties and general law. As the nation seeks to redress past failures and to develop a Federal policy responsive to Indian needs in the years ahead, it should be recognized that the legal and judicial history tends to support the Indian claim of dual rights--both by treaty and special Congressional acts and by inherent rights of citizenship. (Author/NEC)

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A Brief History of the Federal Responsibility to the American Indian

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"Legislative Analysis of The Federal Role
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by
Vine Deloria, Jr.

U.S. Department of Health, Education, and Welfare
Office of Education

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Indians cherish traditional culture and skills, but ask for promised rights in American society.

Introduction

As tribes and individuals, Indians claim dual rights in American society. Granted full citizenship in 1924, Indians are entitled to all protections and benefits enjoyed by other citizens, including free public education for their children.

As the original inhabitants of the United States, Indians also claim rights accruing to no other population group. These rights are based on treaties signed between individual tribes and the Federal Government between 1778 and 1871, acts of the U.S. Congress to implement the treaties and provide for the general welfare of Indian people, and court decisions upholding the validity of treaties and special legislation to deal with Indian matters. However, the documentation substantiating the dual rights claim had not previously been compiled. The Office of Indian Education in the U.S. Office of Education therefore asked Vine Deloria, Jr., eminent Indian author and attorney, to examine the historical record and compile the documentation substantiating the dual rights claim.

Mr. Deloria specializes in the historical relationship between the Indian people and the U.S. Government. A Sioux born on the Pine Ridge Reservation in South Dakota, he is the author of such best sellers as *Custer Died for Your Sins, We Talk, You Listen, Of Utmost Good Faith* and *Behind the Trail of Broken Promises.* As an attorney, he had a major role in founding the Institute for the Development of Indian Law, in Washington, D.C.

Mr. Deloria conducted an extensive search of the Nation's archives to obtain materials pertinent to the early treaties, acts of the Congress, and court decisions. His task was complicated by the facts that many oral agreements had gone altogether unnoted and many written records had been scattered in depositories throughout the country or simply lost.

Mr. Deloria's documentation and legal interpretation of available materials are contained in his 138-page manuscript entitled "Legislative Analysis of the Federal Role in Indian Education," which of necessity is legalistic in language and citation.

Before all Americans had public education...

Indian tribes by treaty and agreement exchanged land for Federal promises to educate their children.

This publication is a brief summary of Mr. Deloria's findings and conclusions, written for the busy layman. With special emphasis on education, the publication reviews the treaty guarantees made by the Federal Government and the services actually provided under the guarantees. It summarizes congressional intent, from the end of the treaty period (1871) to the present, in assigning responsibilities for Indian affairs to a number of Federal agencies. Finally, it examines the consistency with which the courts have upheld the concept of dual Federal responsibility to Indian citizens, as expressed in treaties and general law.

Facing the setting sun, students learn tribal dance as part of their school's cultural renewal program.

Protesting forced settlement on reservations, Sitting Bull led Sioux to victory over General Custer.

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Historical Overview

Indian Nations Cede Land, Lose Means of Livelihood

> . . . I think . . . that when the history of the last one hundred years shall be written it will be a pleasant thing for our children to find here and there a green spot in reference to our treatment of the Indians—an expression of national sympathy and national honor toward these disappearing tribes.
>
> —William Steele Holman, Member of Congress, in the *Congressional Record,* July 17, 1882

Most Indian tribes were sovereign nations with prior claim to vast land resources when the United States opened treaty negotiations during the Revolutionary War. Early treaties (1778-1815) promised peace, friendship, and trade as between independent nations. In exchange for some Indian land, but primarily for trade concessions, the United States assumed a protective role. Tribes retained civil and criminal jurisdiction over their lands and the right to self-government.

For example, treaties with the Delawares and Cherokees permitted these tribes to send delegates to the Congress if they so desired. Recognizing tribal sovereignty, territorial governors and military commanders of frontier posts regularly issued passports for U.S. citizens traveling in Indian lands.

The Northwest Ordinance of 1787, patterned on a plan proposed by Thomas Jefferson, provided territorial status for the lands north of the Ohio River and the legal mechanism whereby territories could eventually apply for statehood. Millions of acres of Indian lands were involved. Article III of the Ordinance reaffirmed the early pledges of the U.S. Government:

> The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and their property, rights, and liberty never shall be invaded or disturbed unless in just and lawful wars authorized by Congress . . . .

Despite these guarantees, Federal policy changed after the War of 1812—a war in which many tribes exercised their right as independent nations to fight on the British side. With the successful conclusion of the second American struggle against the British in a generation, the future of the young Republic at last seemed assured. White farmers in search of fertile land began the westward movement across the Appalachian Mountains into the vast hunting ranges and farmlands of various Indian tribes. Though most Indians were migratory hunters, some cultivated crops and lived in permanent villages.

To supply lands needed by white settlers in these western territories, the United States embarked on a policy of Indian land acquisition that lasted a half century. Under nearly 400 treaties with individual tribes, the United States acquired almost a billion acres of Indian land. In 1871 the Federal Government unilaterally declared the treaty period closed.

When they ceded far-ranging hunting grounds, Indian nations lost both their autonomy and means of livelihood. To compensate, the Federal Government promised agricultural tools, breeding animals, seeds, and training that Indians would need to sustain life on farm plots averaging 160 acres per family. Much of this land was on arid, unproductive reservations in the Southwest. The Government also promised health services and schools.

By 1832, as shown in Congressman Holman's appeal to the nation's conscience, the failure of the Federal Government to fulfill its treaty obligations had led to the virtual disappearance of a number of once proud Indian nations. Federal efforts to improve Indian health, agricultural skills, and education—all guaranteed by treaty—were at best marginal. The reasons were complex. Communication and transportation between Washington and outlying

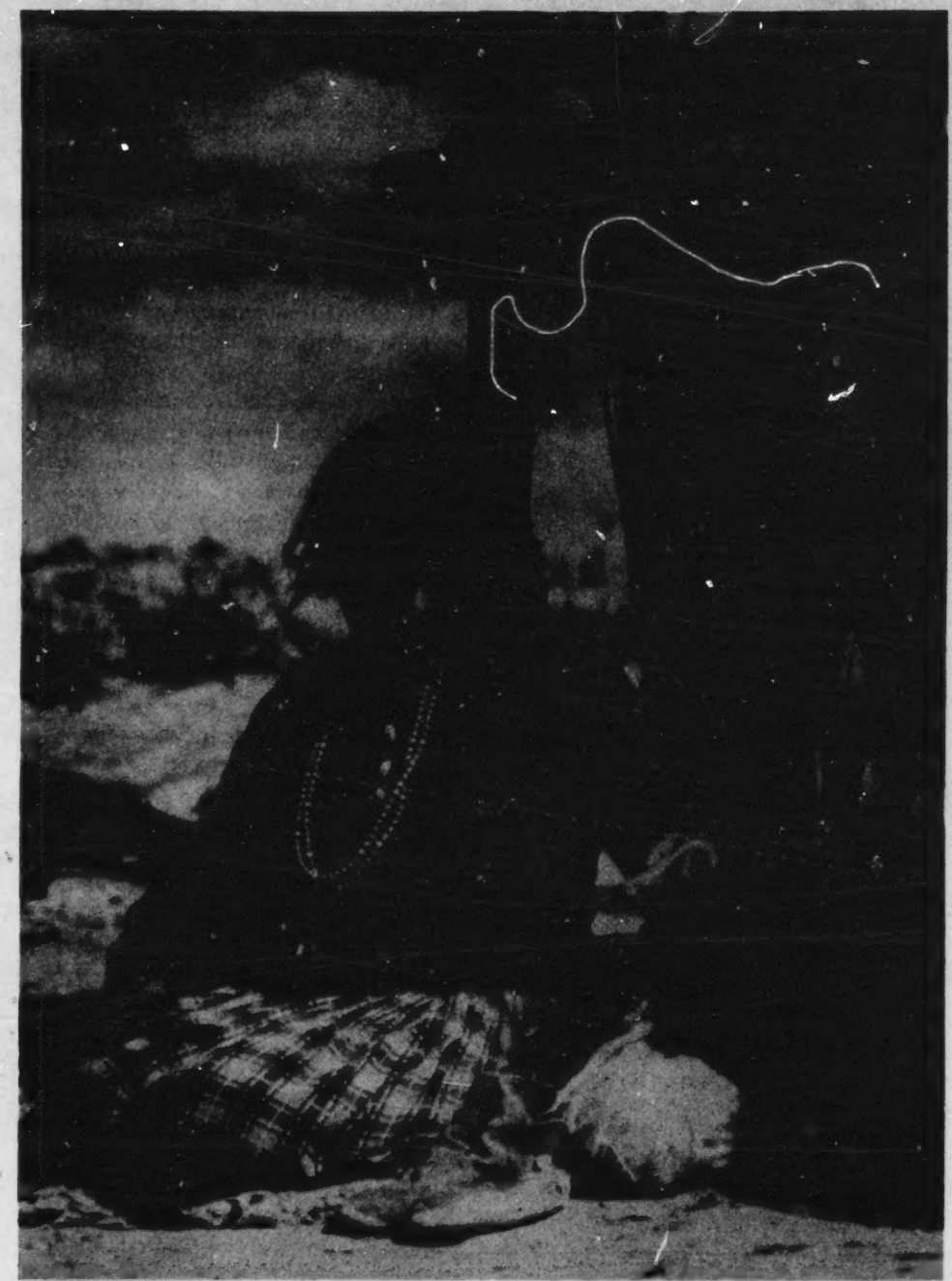
Alaska's natives struggle with a harsh environment...

Where caribou ribs provide an infrequent treat.

territories were slow and unreliable. In the East, the public was generally apathetic toward the problems of Indians many miles away. On the plains, white settlers asked only for military protection against tribes that opposed their encroachment. The Civil War had intervened, forcing the Government to concentrate its resources on holding the Union together.

For many reasons, Indian survival had by the 1880's become the issue confronting the Congress. Whole tribes were ravaged by smallpox and other "white men's" diseases. Insufficient agricultural tools and training—along with some Indian resistance to farming—meant that few families could produce enough food to meet their basic needs. Hunger was widespread, famine a persistent threat.

Indian children were being taken from their families and shipped off to boarding schools, sometimes hundreds of miles from home. Supporters of the boarding school approach said that bringing children together in this way from many small and widely scattered villages was the only feasible way to make public education generally available. Critics said the approach was intended to hasten the assimilation of Indian youth into the general population by removing them for long periods from family and tribal influences. Assimilation was regarded as the solution to the "Indian problem" for generations, mostly because it would end the need for Federal support of the Indian population. It was also thought that assimilation would end Indian uprisings against white settlements.



A 1969 Senate report found average Indian income $1,500 a year, with life expectancy of 44 years.

Indian Needs
Reports Cite Continuing Deprivations

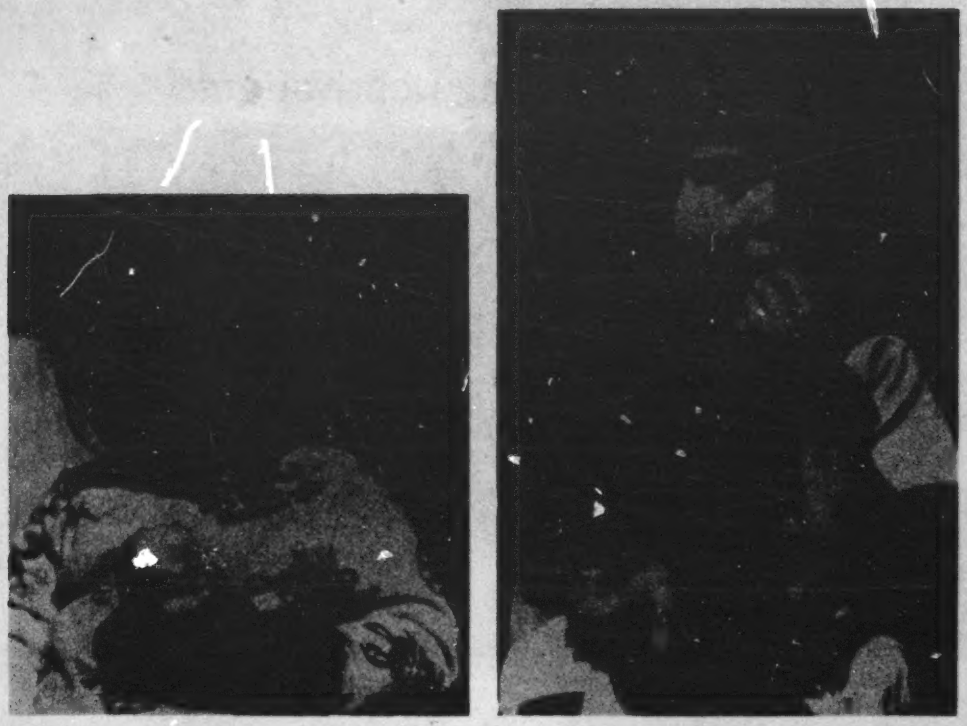
In this century Federal policy has vacillated between mandatory assimilation and recognition of the Indians' right to self-determination, which for most Indians has meant the cultural and social identity of tribal life on reservations. Many observers believe, however, that the nation's record in helping Indians to achieve social and economic parity with other Americans has been little better in this century than in the last.

In 1928 a massive study issued by the Brookings Institution (then the Institute for Governm t Research) brought the Indian plight to national attention. Entitled *The Problem of Indian Administration*, this landmark document was prepared under the direction of Lewis Meriam of the University of Chicago for the Secretary of the Interior, who has jurisdiction over the Bureau of Indian Affairs.

The Meriam Report, as it is better known, reached two basic conclusions: (1) Indians were getting poor services, especially in health and education, from public officials charged with meeting these needs, and (2) Indians were being excluded from the management of their own affairs.

In 1969, four decades after the Meriam Report, the Senate Committee on Labor and Public Welfare issued the findings of its intensive 2-year investigation of social and economic conditions among Indians, both on reservations and in urban centers. The Committee reported that the two major findings of the Meriam Report "remain just as valid today as they were more than 40 years ago." The Committee cited these indicators:

> Fifty thousand Indian families live in unsanitary, dilapidated dwellings, many in huts, shanties, even abandoned automobiles;
>
> The average Indian income is $1,500, 75 percent below the national average;
>
> The unemployment rate among Indians is nearly 40 percent, more than 10 times the national average;



Indians stress education opportunities for their children, knowing many will become tribal leaders.

The average age of death of the American Indian is 44 years; for all other Americans it is 65;

The infant mortality rate is twice the national average; and

Thousands of Indians have migrated into cities only to find themselves untrained for jobs and unprepared for urban life. Many of them return to the reservation more disillusioned and defeated than when they left.

Poor health services undoubtedly contributed to these bleak statistics. The Committee also found poor schooling a major factor:

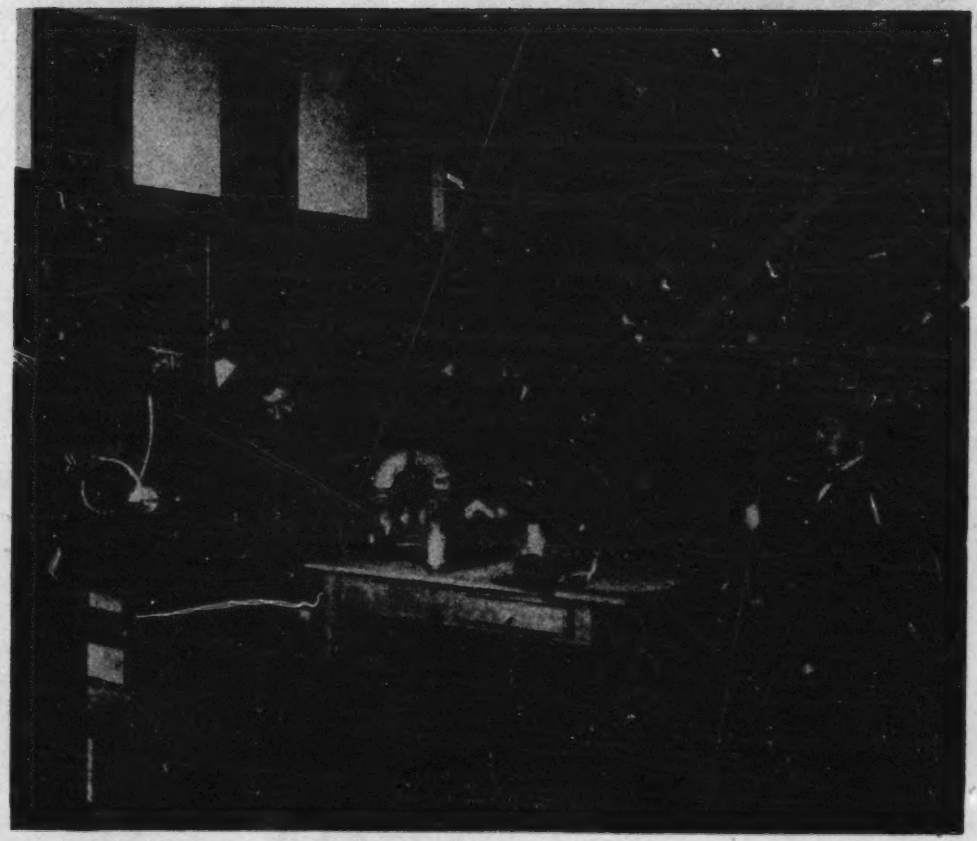
Dropout rates are twice the national average in both public and Federal schools. Some school districts have dropout rates approaching 100 percent;

Achievement levels of Indian children are 2 to 3 years below those of white students; and the Indian child falls progressively further behind the longer he stays in school;

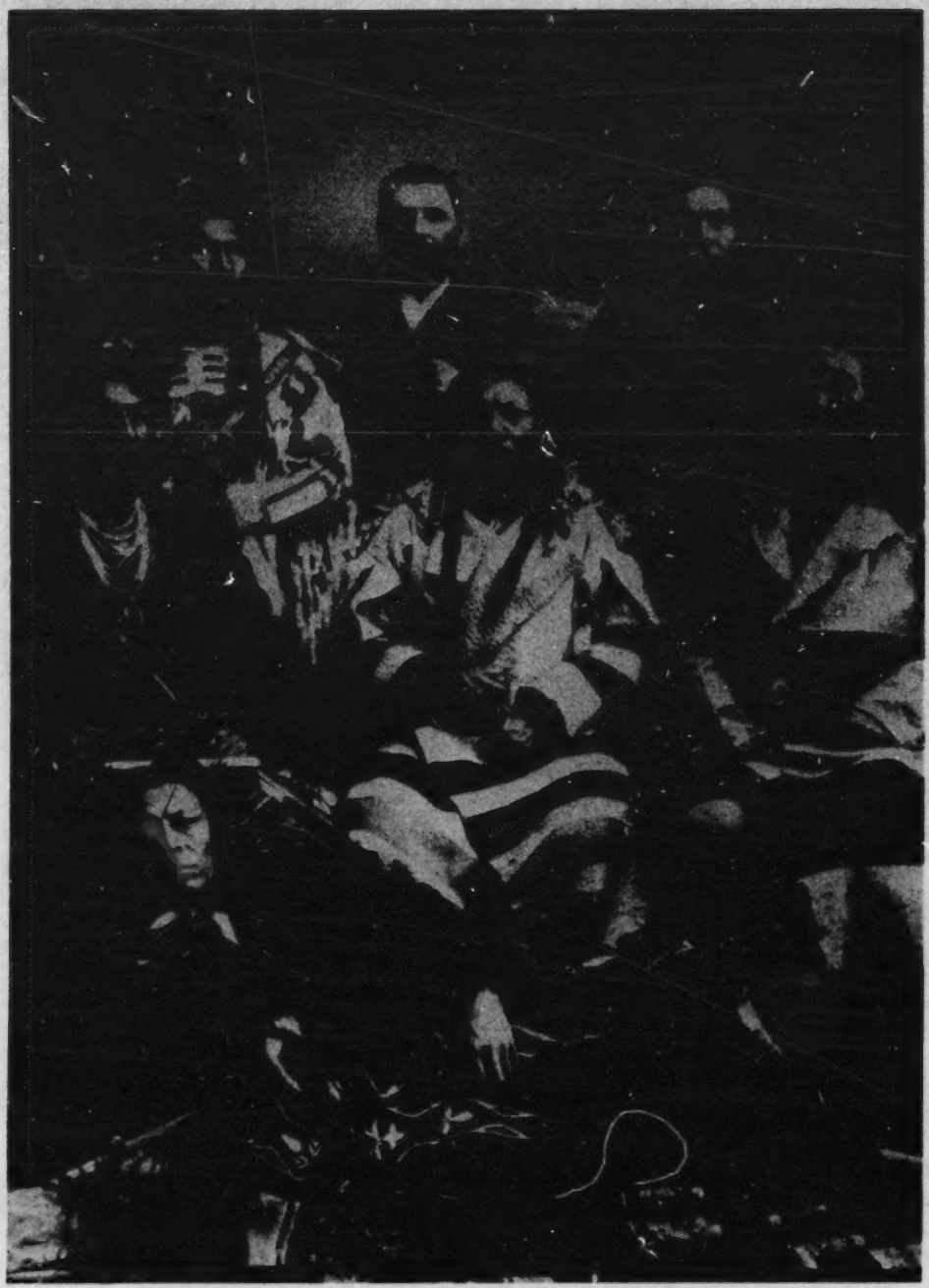
Only 1 percent of Indian children in elementary school have Indian teachers or principals;

One-fourth of elementary and secondary school teachers—*by their own admission*—would prefer *not* to teach Indian children; and

Indian children, more than any other minority group, believe themselves to be "below average" in intelligence.



Schools around 1900 had no qualified Indian teachers, a situation fortunately improving today.



By an 1872 treaty, Flathead chiefs gave up their hunting grounds on Montana's Bitterroot River.

Treaty Period
Promise and Performance

> . . . . We wish our children educated. . . . . We are anxious . . . that our rising generation should acquire a knowledge of literature and the arts, and learn to tread in those paths which have conducted your people, by regular generations, to their present summit of wealth and greatness.
>
> —Choctaws to the Secretary of War, 1824

Treaty records and related correspondence in the nation's archives relate only to a fraction of the nearly 400 treaties negotiated from 1778 to 1871. Many agreements were oral; many records have been lost. Records that do exist show conclusively, however, that Indian nations ceded their lands to the Federal Government with great reluctance and that they did so in the end largely on the basis of Federal promises to educate their children.

The treaties provided Federal annuities to be paid to tribes, based on the value of their ceded lands. Most treaties specifically set aside lands to be sold for the support of a school fund. The Choctaw treaty, for example, stipulated the following:

> Out of lands ceded by the Choctaw nation to the United States . . . fifty-four sections of one mile square shall be laid out in good land, by the President of the United States, and sold, for the purpose of raising a fund, to be applied to the support of the Choctaw schools, on both sides of the Mississippi . . . .

In effect, Indians were required to support their own schools from the proceeds of land sales, though the Federal Government assumed responsibility for providing both schools and teaching staff.

Few tribal leaders could speak or write English. They had to rely on interpreters and explanations of treaty proposals by Indian Treaty Commissioners appointed by the President. The communications gap caused misunderstanding and, in some cases, bitterness on both sides.

Planning to relocate the Chippewas, Pot-

tawatomies, and Ottawas after they ceded lands in the Chicago area, the Treaty Commissioners told the Pottawatomie Chiefs in 1845:

> If the Pottawatomie Chiefs are wise they will make their people happy. Their lands are only held temporarily .... We can't build their mills, blacksmith shops, or their school houses or other improvements. If we did, they would all be lost to them when they removed to a new country.

The Pottawatomie Chiefs, some of whom were literate, responded in writing, raising two issues:

> 1. We have asked for schools in our country... but they have been denied. .... Instead of building schools in Pottawatomie country, the Government had sent Pottawatomie boys to school in Kentucky.
>
> 2. .... We did not know that the education of the boys in Kentucky was to be paid for out of our monies ....

The Commissioners finally promised that if the three tribes moved within two years to new lands designated by the Federal Government, the President would "have your school fund expended at your new home, and among your own people ... forever thereafter."

While the removal of the Chippewas, Pot-

In 1877, Chief Joseph led the Nez Perce in violent protest of a fraudulent land treaty.

tawatomies, and Ottawas from the Chicago area was based on the explicit promise that the United States would provide educational services forever, most treaties promised schooling and other Federal services for only a limited time. The Menominee (1831) and Pawnee (1833) treaties, for example, provided Federal schools for 10 years; other treaties extended the period to 20 years. Officials in Washington believed that these relatively short periods would be adequate to prepare Indians to till the land, become self-sufficient, and be ready for assimilation into the general population. At this point, Federal support would terminate. However, Washington was slow in implementing some treaties and deficient in providing services guaranteed by others.

The history of the 1855 treaty with the Nez Perce provides an example of the kind of delay which caused many Indians to question the good faith of the Federal Government. In 1863 a new agent to the Nez Perce reported that little had been done to carry out the 1855 treaty.

"On taking charge of the Office I took pains to ascertain what had been promised to," he said, "and what had been done for the Nez Perce nation . . . . I found . . . no school house . . . no hospital built, and . . . mills were not furnished . . . ."

Some tribes questioned the ability and motivation of teachers sent by the Federal Government.

Hole-in-the-Day, the Chippewa Chief, took the problem directly to the U.S. Commissioner of Indian Affairs.

"The teachers who have been sent among us have never done us any good," Hole-in-the-Day began, according to surviving records of the conversation . . . . "They seem to care about nothing but their salaries . . . ."

". . . . Don't you feel . . . the want of education?" the Commissioner asked. "Would you not, for instance, like to know how to read this paper?"

"Father, it is 20 years since we began to receive annuities," replied Hole-in-the-Day. "Refer back, and you will find those stipulations for the employment of teachers [and others] . . . . We have remained long enough in ignorance, depending upon others, and we now want to try something for ourselves . . . all know we must have a teacher. We [will] employ such a one as we think will suit. We will then have him under our control . . . ."

"We will try and have the evil corrected," the Commissioner promised . . . we [will] set apart the [annuity] fund, and let the Indians employ their own teachers . . . ."

Hole-in-the-Day had the last comment. "Father," he said, "if you want to have us educated to read, why don't you take some of your own money, instead of ours, and sacrifice it in upholding the present system?"

As a result of this meeting, the amended treaty with the Chippewa tribes contained the following provision:

> The Mississippi bands have expressed a desire to . . . employ their own farmers, mechanics and teachers; and it is therefore agreed that the amounts to which they are now entitled, under former treaties, for the purposes of education, for blacksmiths, and assistants, shops, tools, iron and steel, and for the employment of farmers and carpenters, shall be paid over to them as their annuities are paid . . . ."

A proviso was added, however. Washington kept the authority to resume responsibility for providing these services if the Chippewas failed to provide them to the satisfaction of Federal officials.

Legal questions raised by these early treaties persist. The Chippewas, Pottawatomies, and Ottawas were promised Federal schooling for their young people in perpetuity. Some treaties specifying education and other services for periods of 10 to 20 years, as in the case of the Nez Perce treaty, were not immediately implemented upon ratification by Congress. The Chippewas, according to Hole-in-the-Day, had lost 20 years because teachers furnished by the Federal Government taught them nothing. The Pottawatomie Chiefs had understood their treaty to mean their children would be educated at home, not in far-off Kentucky.

Whether the treaties specified Federal services for 10 to 20 years or forever, the purpose was to prepare Indians to enter the mainstream of American life.

Indian leaders today take the position that the Meriam Report (1928) and the Senate Committee on Labor and Public Welfare report (1969) graphically illustrate that Indians have still not entered the American mainstream. In this respect, Indians believe, provisions of the early treaties remain unfulfilled. Their rights under these unmet treaty obligations, on the one hand, and their basic rights as U.S. citizens, on the other, form the basis for Indian claims to dual rights in U.S. society.

Chiefs asked meetings with Federal officials to interpret treaties in a foreign language--English.

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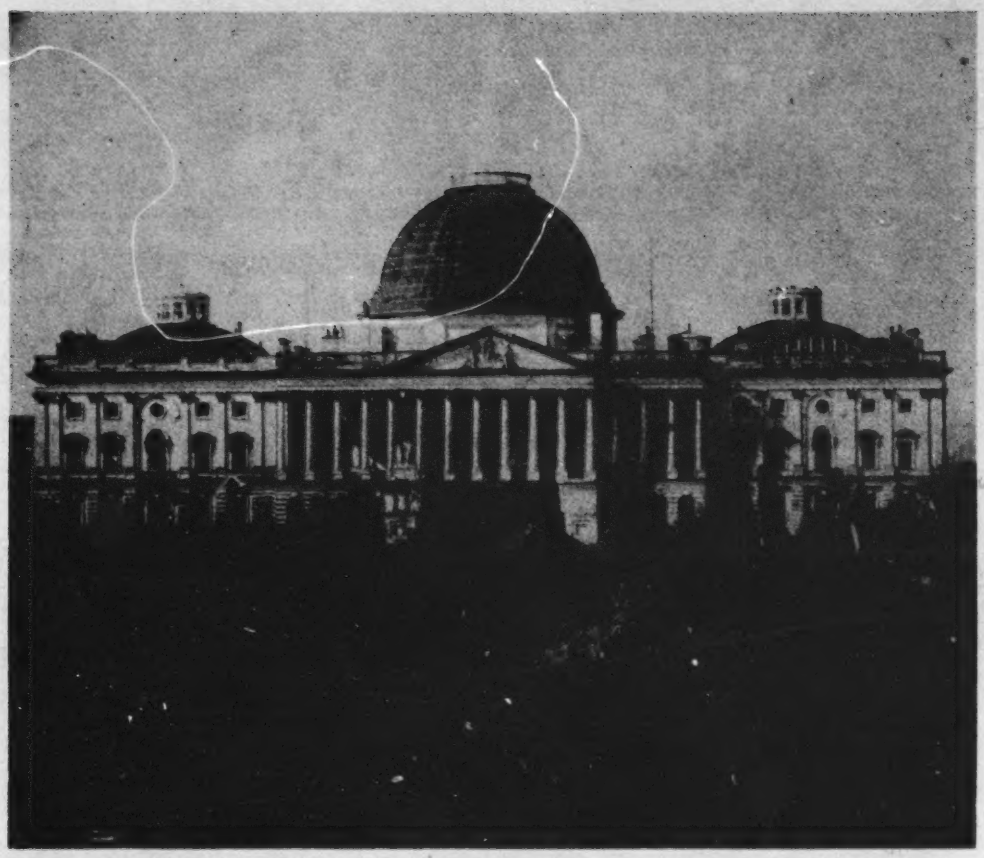


Beneath an unfinished Capitol dome, Congress enacted laws recognizing its responsibility to Indians.

Congressional Intent
Special Laws for Indian Welfare

> And be it further enacted, That in order to promote civilization among the friendly Indian tribes, and to secure the continuance of their friendship, it shall be lawful for the President of the United States to cause them to be furnished with useful domestic animals, and implements of husbandry, and with goods or money, as he shall judge proper . . . .
>
> —"Civilization Act" of 1802

Even as early Federal policy sought to assimilate Indians into the multiethnic population migrating to America, the Congress repeatedly passed special legislation to deal with Indian problems, thus proclaiming its intention to handle Indian affairs apart from matters involving the population at large. In this respect, the Congress adhered to the Constitution, which expressly exempted Indian communities from Federal taxation and most laws governing Americans. This approach was upheld by a Federal court decision in 1884, which stated that "general acts of the Congress do not apply to Indians, unless so expressed as to clearly manifest an intention to include them."

In recent years, Indian leaders have cited this legislative history as proof that the Congress has consistently recognized its unique responsibility to the original inhabitants—and owners of most U.S. land. Indian leaders maintain that this unique Federal responsibility still exists.

The legislative history on which Indians base this claim began with the "Civilization Acts" of 1802 and 1819. These acts provided modest funds—$15,000 a year for all Indian social and welfare programs—to help Indians make the transition from the life of the migratory hunter to that of the self-sufficient farmer.

The 1819 act stipulated that these funds were to provide "against the further decline and final extinction of the Indian tribes . . . and for introducing among them the habits and arts of civilization." These funds, in effect, were to supplement the Federal cash allotments paid to Indians for ceded lands. They were to help defray the

cost of agricultural training and tools, health services, education, and other "civilizing" services.

Prior to the Civilization Acts, Federal laws were intended to implement specific treaty provisions. With the 1819 statute, the Congress went beyond obligations assumed by treaty with individual tribes to deal with the survival needs of all Indians. It made no distinction in this legislation between tribes that had signed treaties with the United States and those that had not.

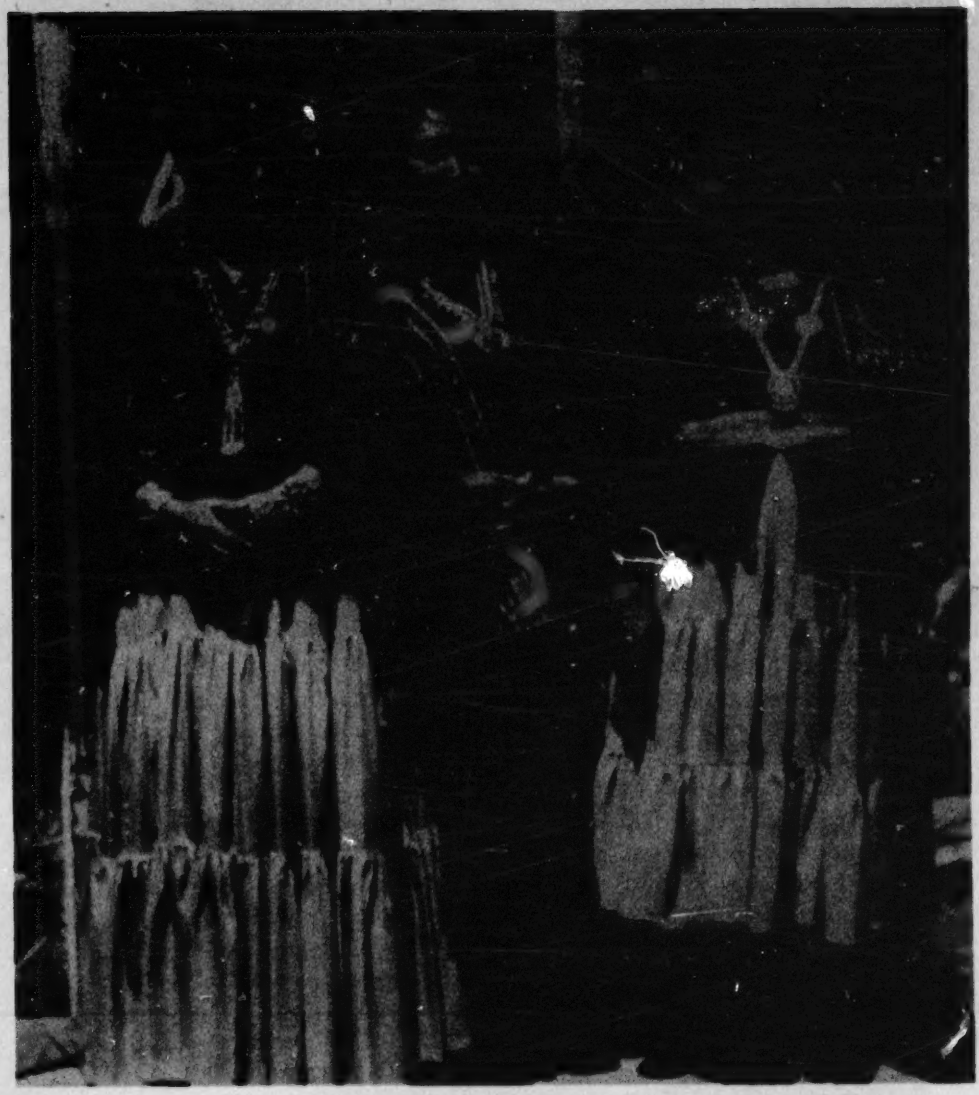
The 1819 law set a pattern for subsequent legislation. Throughout most of the 19th century, as the relative importance of treaties declined, the Congress unilaterally accepted more and more responsibility for Indian welfare. Thus, by the close of the treaty period in 1871, Indians had accrued rights to Federal services under two types of legal authorization: (1) treaties with individual tribes, and (2) congressional acts applicable to all Indians.

For 40 years after the treaty period, the United States continued to sign agreements that were not official treaties but were often so regarded by Indians and, in later years, by the courts. However, the emphasis of these agreements and related acts of the Congress gradually changed from rights granted to tribes to a more general concern with the welfare of individual Indians.

Did this mean that Indians retained their entitlement to Federal services even where they had decided to live and work off-reservation as part of the general society? Legal opinion, even today, varies on this point. Many legal scholars believe these rights to special Federal services do apply to individual Indians wherever they live or work.

The issue of individual Indian rights to Federal services was clouded or clarified, depending upon conflicting legal interpretations, by two acts granting citizenship to Indians. In 1919 the Congress voted citizenship for Indians who had served in the military during World War I and had received an honorable discharge. The Indian Citizenship Act of 1924, cited earlier, conferred citizenship on the entire Indian population.

One legal view holds that, with citizenship, Indians lost their special status under Federal law and consequently their rights to special Federal services. They were now, according to this view, entitled to all social, welfare, education, and other Federal services available to the general public, but *not* to a continuation of the special programs guaranteed by treaty and



Wearing modern dress as teachers and aides, many women return to traditional costume for festivals.

Federal law in the precitizenship period. A contrasting legal opinion cites the constitutional exclusion of Indians from most acts governing citizens, and the 1884 Federal court ruling that Indians were not covered by Federal legislation unless expressly included. This position holds that the Congress, having authorized Indian citizenship, nevertheless intended to continue handling Indian affairs apart from the general welfare unless it specifically provided for Indians in general legislation.

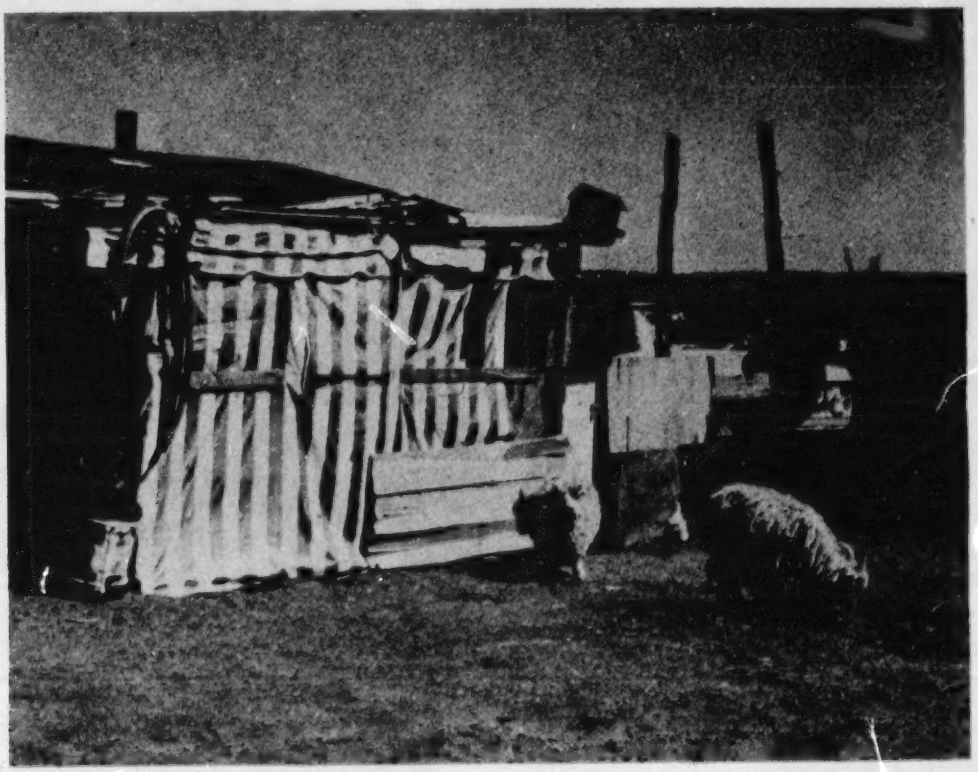
The latter legal doctrine—dual rights for Indians—was subsequently reinforced. Dealing expressly with Indian affairs, the Congress passed the Wheeler-Howard and Johnson-O'Malley Acts in 1934. The Wheeler-Howard Act provided a basis for formalizing tribal self-government under the supervision of the Secretary of the Interior and clarified the powers of reservation governments. The Johnson-O'Malley Act authorized the Secretary of the Interior to contract with States and Territories to provide education, medical attention, agricultural assistance, and social welfare services to Indians in their respective jurisdictions.

On the other hand, the dual rights doctrine was evident in general legislation as the nation sought to improve the quality of life after World War II. Indians were expressly included in the Area Development Act of 1961 and the Economic Opportunity Act of 1964.

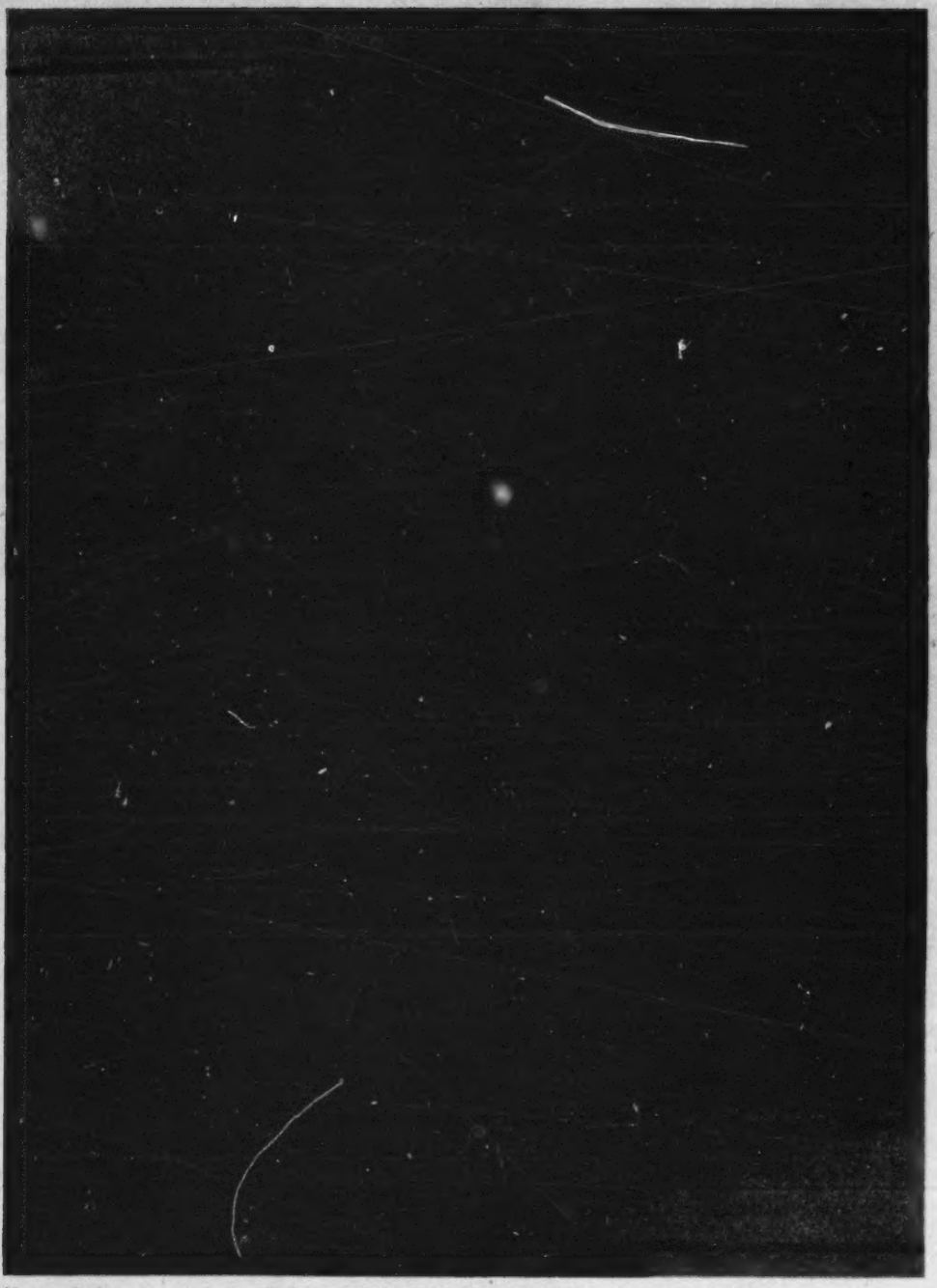
Indian children and adults have benefited from numerous Federal education programs. The largest of those administered by the Office of Education is the multi-billion-dollar compensatory education program for children from low-income families authorized by Title I of the Elementary and Secondary Education Act of 1965. The Congress expressly included Indians among the populations to be served by ESEA programs. Other programs serving Indians as members of the general population include Right To Read, Follow Through, Education for the Handicapped, Emergency School Aid, and Adult Education Special Projects. Moreover, Indian youths may qualify on the same basis as any other students for college tuition loans and grants under Federal programs.

Recognizing the need for additional Federal assistance to Indian students, the Congress returned to the special legislation approach with passage of the Indian Education Act of 1972. Administered by the Office of Education, the act provides nearly 2,000 grants annually to meet the special learning needs of Indian children and adults.

Together with public schools and schools operated by the Bureau of Indian Affairs, Indian tribes and organizations operating their own schools are eligible for grants. The Indian community must be involved in planning and operating every project, regardless of the school agency funded. The Indian Education Act is the first Federal legislation to *require* active participation by Indians and Alaska Natives in projects supported under its authority. This is significant because it responds to criticisms dating back to the Meriam Report that Indians have been systematically excluded from the management of their own affairs.



Grazing animals are one of the very few cash income sources available on southwestern reservations.



Young Indians want their tribal contributions to American life made part of school curriculum.

Judicial History
Courts Uphold Congressional Intent

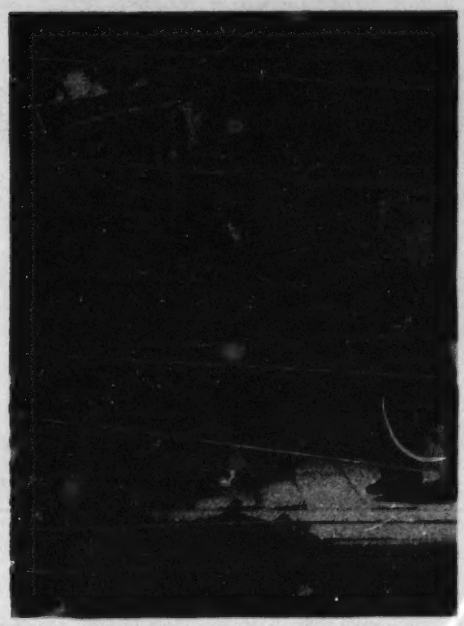
> Not only does the Constitution expressly authorize Congress to regulate commerce with Indian tribes, but long-continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States as a superior and civilized nation the power and duty of exercising a fostering care and protection over all dependent Indian communities within its borders.
>
> —U.S. Supreme Court, *United States v. Sandoval,* 1913

The nation's courts have consistently considered the welfare of the nation's entire Indian population in ruling on Federal responsibility under various treaties and acts of the Congress.

For example, when the Congress enacted the 1819 Civilization Act, it was attempting to prevent the extinction of tribes along the U.S. frontier. For this reason, the Congress made no distinction between tribes that had treaties with the United States and those that did not. The congressional intent was to save people who were unsuccessful in adjusting to life as farmers on limited land. While both the frontier and the treaty period have been closed for a century, the courts continue to honor the intent of early Federal promises. This intent often went beyond the letter of specific treaties and legislation. As cited above, the Supreme Court ruled in 1913 that the United States is responsible for the "care and protection" not only of tribes on the original frontier and eastern tribes holding U.S. treaties but of *"all dependent Indian communities within its borders . . . ."* [emphasis added.]

Increasingly in recent years, Indians have sought adjudication in the courts of treaty rights they believe remain unfulfilled by the Federal Government. Courts, in turn, have recognized that the tribal leaders of a century ago did not always understand the treaty they signed. They have permitted in evidence massive documentation in fishing rights cases, for example, showing what tribes in the Northwest believed their rights to be and the extent to which the Government has kept its commitment.

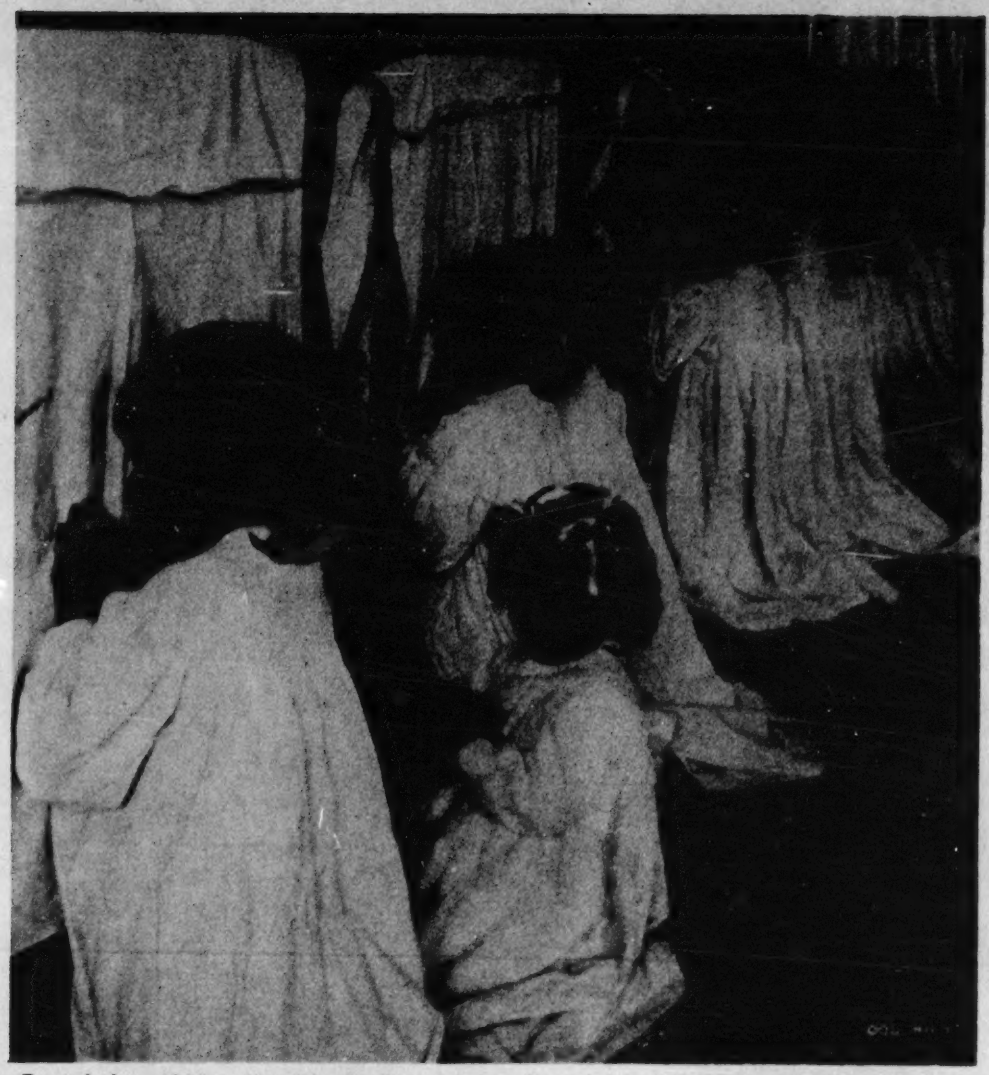
As regards education, the courts have ruled in some cases that the Government failed to provide schools and teachers as quickly or as fully as treaty agreements required. In a 1936 case, *Sioux Tribe v. United States,* the Court of Claims said: "The record establishes that for a long period of time the Government did not strictly observe the provisions . . . of the treaty of 1868 . . . with respect to furnishing the educational facilities provided for therein."



School programs include old tribal tales...

While some adults pursue native crafts.

The Court of Claims pointed out that children were the real victims, but it asked: ". . . how may [this lack of education] be reduced to dollars and cents? . . . the measuring of damages, making restitution for an alleged loss in money, . . . resists calculation."



From before 1900 residential schools were often 'home' for children during most of the year.

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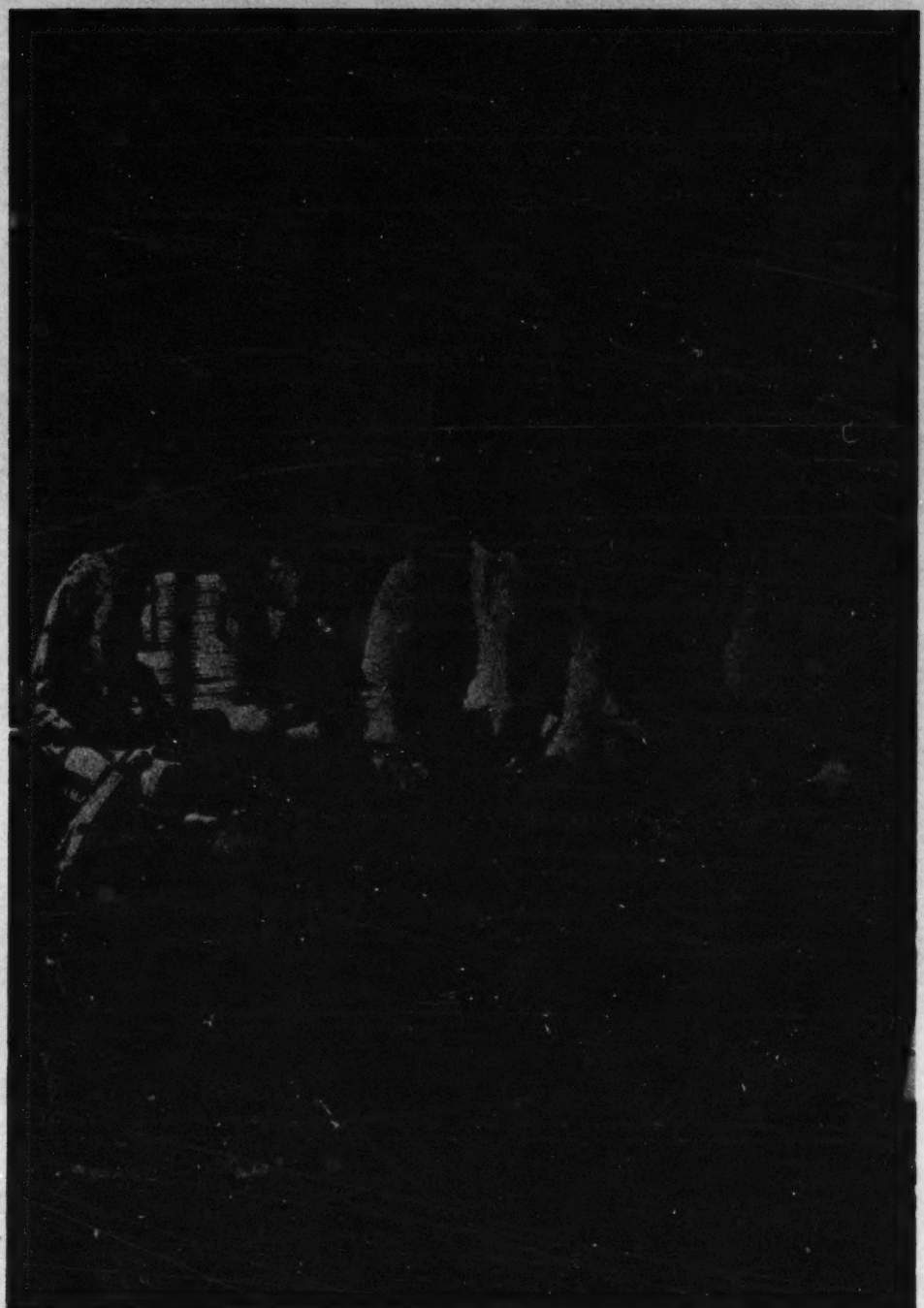


Since the treaty period Federal agencies have shared the support of Indian education and welfare.

Federal Services To Indians
Many Agencies Share Responsibility

> . . . all stocks, bonds, or other securities or evidences of indebtedness now held by the Secretary of the Interior in trust for the benefit of certain Indian tribes shall . . . be transferred to the Treasurer of the United States, who shall become the custodian thereof . . . .
>
> —Act of Congress, 1876

Many people erroneously assume that the U.S. Department of the Interior's Bureau of Indian Affairs (BIA) is solely responsible for Federal programs to assist Indians and that funds channeled through other Federal agencies to State and local governments may not be used to benefit the Indian population.

Over the years Indians have come to participate in an array of social service programs administered by the Department of Health, Education, and Welfare, the Department of Agriculture, the Department of Labor, and other agencies. While BIA responsibility has not diminished, that of other agencies has increased.

Interagency involvement in Indian affairs dates from the nation's first year under the Constitution. Reflecting the views and needs of an uncomplicated agricultural society that was wary of centralized government, the Congress in 1789 authorized only three agencies in the Federal executive—the Departments of War, State, and the Treasury.

In 1789 most Indian nations were located west of the white frontier settlements on the eastern slopes of the Appalachian range. Maintaining peace on the frontier was up to the Army. The Congress therefore delegated major responsibility for Indian matters to the War Department. However, the State Department was designated to keep records related to treaties and to handle diplomatic relations with tribes in the territories. The Treasury Department was assigned to manage for the Indian nations the trust funds derived from their land sales to the Government.

BIA was created by Secretary of War John C. Calhoun by departmental order in 1824. The Congress made it a permanent

Government unit, still in the War Department, 10 years later.

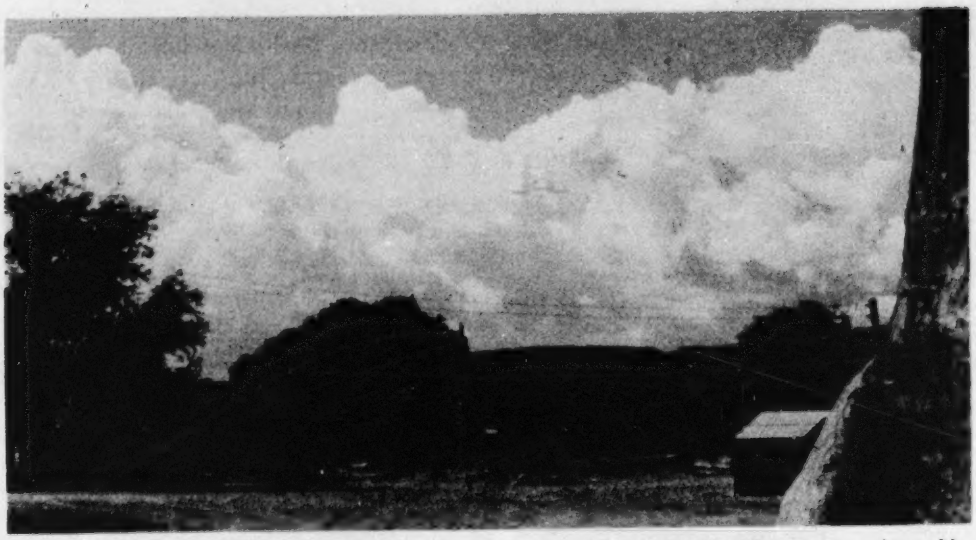
When the Department of the Interior was established in 1849, BIA was transferred to that agency. Later, the State Department's conduct of diplomatic relations with the Indian nations and the Treasury Department's administration of Indian trust funds also were transferred to BIA. The Congress nevertheless soon made it clear that Federal responsibility for Indian affairs had not been permanently centralized in the Department of the Interior. Not satisfied with the Interior's administration of the trust funds, Congress in 1876 returned it to Treasury, where it remains today.

As other executive agencies were created, some of them also assumed a share of the Federal responsibility for Indian welfare. The Department of Agriculture worked on Indian reservations to control livestock diseases and soil erosion. Indians in recent times have participated in Agriculture's farm loan, surplus commodity, and food stamp programs. Similarly, Indians have benefited from the services of the Department of Commerce and the Department of Housing and Urban Development. And, as mentioned earlier, when Congress

From remote Alaskan islands to southwestern pueblos, from Maine woods to Florida everglades...

began to pass major aid-to-education programs in the 1960's, it assigned responsibility for administration of most programs to the Department of Health, Education, and Welfare's Office of Education.

Thus, the Congress has consistently charged a number of agencies with the administration of Federal programs specifically for Indians. Moreover, the Congress has specified the inclusion of Indians, often by special amendment, in social service programs administered by a variety of agencies to benefit the general public.



Over 250 tribes are eligible for Federal funds to help educate their children for tomorrow's world.

Conclusion

The foregoing historical review shows that Federal treaty promises were not always kept, though there were sometimes mitigating circumstances, including the disruptions caused by the Civil War. Problems also arose because there were misunderstandings between tribes and Treaty Commissioners as to what some treaties actually called for.

From the beginning of the Republic, the Congress sought through special legislation to deal responsibly with Indian needs. The policy seeking to assimilate Indians into the general population has given way to a recognition of the Indian right to self-determination. And while continuing special programs for Indians, the Congress has expressly broadened recent social welfare programs for the general population to include Indian children and adults. A notable example is the Elementary and Secondary Education Act of 1965.

The U.S. Supreme Court, like lower courts, has maintained that "an unbroken current of judicial decisions" gives the Federal Government both the power and duty to care for the Indian population. As tribes seek clarification of their rights under the early treaties, courts are increasingly admitting into evidence extensive documentation showing what Indians believe their rights to be.

As the nation seeks to redress past failures and to develop a Federal policy responsive to Indian needs and aspirations in the years ahead, it should be recognized that the legal and judicial history tends to support the Indian claim of dual rights—by treaty and special acts of the Congress on one hand, by rights inherent in citizenship on the other.

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